

ESTATE OF HABAH, or  
MRS. SAM GRAY

IBIA 73-9

Decided October 31, 1973

Appeal from Judge's decision after rehearing, granting probate of last will and testament of decedent.

Affirmed.

Indian Probate: Wills: Disapproval of Will

The Secretary cannot properly disapprove a valid will merely because it may disinherit a potential heir at law.

Indian Probate: Wills: Testamentary Capacity

The burden of proof as to testamentary incapacity in Indian probate proceedings is on those contesting the will, and an aged Indian is not deemed to be incapacitated from making a valid will by being unable to manage her own affairs, or by failing or defective memory, failure to recognize old friends, relatives, or members of the testatrix's family if they do not affect the execution of the will.

Indian Probate: Wills: Testamentary Capacity

Testamentary competency requires that the testatrix have the mental capacity to understand the nature of the act in which she was engaged, knows the nature of her property, the natural objects of her bounty and the distribution she desired to make of her property.

Indian Probate: Wills: Undue Influence

In Indian probate proceedings, proof of undue influence in the execution of a will must be so substantial that the judges of fact, having a proper understanding of what undue influence is, may perceive by whom and in what manner it has been exercised, and what effect it has upon the will.

Indian Probate: Wills: Undue Influence

To invalidate an Indian will because of undue influence, it must be shown: (1) that the decedent was susceptible to being dominated by another; (2) that the person allegedly influencing the decedent in the execution of the will was capable of controlling her mind and actions; (3) that such person, at the time of the testamentary act, did exert influence upon the decedent of a nature calculated to induce or coerce her to make a will contrary to her own desires; and (4) that the will is contrary to the decedent's own desires.

APPEARANCES: Michael Celestre, Esquire, and James Wechsler, Esquire, for Appellants; Robert C. Ericson, Esquire, for Appellees.

OPINION BY MR. SABAGH

This matter comes before the Board on appeal from the Administrative Law Judge's decision after rehearing, affirming his prior decision granting probate of the last will and testament of the decedent.

In their reasons for appeal, the appellants herein, daughters of the decedent, contend that the Judge's Order approving the will and Decreeing Distribution was erroneous for the following reason:

- (1) That the decedent was incompetent and not of sound mind at the time of the execution of her last will and testament.
- (2) That undue influence was exerted on the deceased in order to influence her to execute the said last will and testament.
- (3) That the deceased was laboring under a mistake of

fact at the time of the execution of said last will and testament.

These contentions were raised in appellants' petition for rehearing and were duly considered and rejected in the Judge's decision for reasons fully set forth therein.

Having reviewed the record and considered the briefs of the appellants and appellees, the Board finds that the appellants have shown no reason why the findings of fact, conclusions of law, and decision of the Administrative Law Judge should not be affirmed. We hold that there is substantial evidence in the record to support the decision and order of the Judge attached hereto.

NOW THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Administrative Law Judge approving the Will and his Decree of Distribution is hereby AFFIRMED.

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Mitchell J. Sabagh, Member

I concur:

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David J. McKee, Chairman

United States Department of the Interior  
Office of Hearings and Appeals  
Room 301, Federal Building  
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Gallup, New Mexico 87301

PROBATE  
IP GA 75G 72  
(IP GA239G 71)  
RBD

IN THE MATTER OF THE ESTATE OF  
HABAH, or MRS. SAM GRAY,  
Navajo Allottee No. 1365

ORDER ON REOPENING

An Order Approving Will was entered in this matter on October 1, 1971. Thereafter, and on November 16, 1971, Mary Begay and Mary George, daughters of the decedent, petitioned for rehearing. Petitioners alleged that decedent, at the time of executing her will (November 12, 1968) was (1) incompetent and not of sound mind, (2) subject to undue influence, and (3) laboring under a mistake of fact.

Order Allowing Rehearing and reopening the matter was entered on December 12, 1971, and further hearing was held at Crownpoint, New Mexico, on February 7, 1972, with petitioners and proponents of the will present, in person and represented by counsel.

The testimony of petitioners and other witnesses in support of petitioners position, is not convincing enough to cast any serious doubt on the decedent's mental alertness and awareness at the time the will in question was executed. In fact the testimony of petitioners themselves acknowledges rather than denies her mental competence and understanding of what she was doing. The proof offered to show decedent was acting under a mistake of fact, falls short too.

There seems to me to be no serious challenge to the proposition that Habah, the testatrix, knew what she was doing when she made her will; that she knew what lands she had; knew her family members and knew respectively whether or not they had land interests of their own. From the record, it appears that she had formulated in her mind, her wishes as to the disposition of her property, and that no undue influence from anyone brought about her frame of mind. The favoring of some over others was not unnatural or irrational in the light of explained circumstances.

I find that Habah or Mrs. Sam Gray, Navajo Allottee No. 1365, when she executed her Last Will and Testament of November 12, 1968, aforesaid, was of sound mind and memory, and was acting freely, of her own volition, without undue influence from any other person.

NOW, THEREFORE, by virtue of the power and authority vested in the Secretary of the Interior by Section 1 of the act of June 25, 1910 (25 U.S.C. 572) and other applicable statutes, and pursuant to 43 CFR 4.240, It Is Hereby Ordered that the decision herein of October 10, 1971, entitled Order Approving Will, be, and the same is hereby confirmed; and petitioner's request that said will be declared invalid, is hereby denied.

Done at the City of Gallup, New Mexico, and dated OCT 10 1972

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Richard B. Denu  
Administrative Law Judge